

Frequently Asked Questions (FAQs) Concerning Changes to the ch. NR 700 Series of Administrative Rules

RR-968

November 2013

The following questions were raised during webinars with external and internal audiences regarding revisions to the NR 700 rule series. Webinars were conducted during a six-week period from September 18 to October 22, 2013.

The NR 700 rule series provides comprehensive requirements for completing the investigation and remediation of contaminated property. Although additions and revisions to these rules have been made since they were originally promulgated in 1994, those changes were focused on very specific issues. The changes to the NR 700 Series are the result of a complete review and incorporation of many statutory, policy and technical changes that have occurred since original promulgation.

NR 700

Q. Who is required to submit “site progress reports” under ch. NR 700?

A. *Persons who are “responsible parties” are required to submit site progress reports to the department at 6 month intervals until case closure is granted by the department.*

The following persons are not considered a “responsible party” under ch. 292, Stats., and therefore would not be required to submit a semi-annual report even though they possess a property impacted by a discharge of a hazardous substance:

- *Local governmental units that are exempt from portions of the Spill Law under s. 292.11(9)(e), Stats.;*
- *Lenders – in most cases* - for those hazardous substances that the lender is exempt from responding to under s. 292.21, Stats.; and*
- *Off-site property owners – in most cases* - for those hazardous substances that the person is exempt from responding to under s. 292.13, Stats.*

**Note: There may be special situations where a lender or off-site property owner is required by the DNR to respond to an emergency situation, and the semi-annual report may be required in relation to those limited actions. The DNR project manager should be consulted in these limited situations.*

Q. Are the electronic submittal requirements the same between the rule chapters?

A. *Yes, the electronic submittal requirements are the same throughout the rule series. NR 700 requirements were not only referenced, but repeated in some sections so that the user did not have to look it up each time. Please see DNR publication "Guidance for Electronic Submittals" at: dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf.*

NR 708

Q. If someone requests a No Further Action (NFA) letter under NR 708 do they need to include the new closure form (4400-202) with their request?

A. *In order to be eligible to request a No Further Action determination from the Department, the situation must be an "immediate action" as that term is defined in s. NR 700.03(28). In general, this means a response action is taken shortly after a hazardous substance discharge occurs or is discovered.*

If the action taken results in a situation where the site does not pose an imminent threat to public health, safety, welfare or the environment, then the site would be eligible for an NFA letter from DNR. The request for No Further Action would need to meet the requirements contained in s. NR 708.09 but would not need to include Form 4400-202.

NR 712

Q. The new definition of hydrogeologist has been expanded to require that the person must be licensed as a hydrologist or registered as a geologist. Does "licensing" mean something different than "registered?"

A. *A note was added following the definition in s. NR 712.03(1) indicating that the term registered geologist means a Professional Geologist that has been licensed in accordance with the provisions in ch. GHSS 2, Wis. Adm. Code and the term licensed hydrologist means a Professional Hydrologist that has been licensed in accordance with the provisions in ch. GHSS 3, Wis. Adm. Code.*

Q. Do the ch. NR 712 qualifications apply to Phase I and Phase II environmental assessments?

A. *The rule clarifies that ch. NR 712 – Personnel Qualifications for Conducting Environmental Response Actions - applies to all Phase I or Phase II environmental site assessments submitted to the DNR. Those documents must be prepared by or under the supervision of a professional engineer, hydrogeologist or scientist. All field work must be conducted by persons meeting the qualification standards in ch. NR 712.*

If a Phase I or Phase II environmental assessment is being prepared for a property transaction, and it is not going to be submitted to the DNR for approval or relied on for a regulatory/statutory purpose, then complying with ch. NR 712 is not required, but highly recommended.

NR 714

Q. Would Soil Vapor Extraction (SVE) Systems or Vapor Mitigation Systems require the RP to post a DNR-issued sign?

A. *Section NR 714.07(4) requires that a DNR-supplied sign be posted at a site or facility meeting certain site-specific conditions. The determination if a sign would be required would be made on a case-by-case basis, after considering the site-specific factors in relation to the criteria in this section of ch. NR 714. DNR may require a sign anywhere the DNR believes an unacceptable human exposure to contaminants exists. However, it would be a very rare situation that a SVE or vapor mitigation system would meet such a threshold.*

NR 718

Q. Explain under what situations NR 718 should be used to address contaminated soil and when one should rely on the low hazard exemption provisions in s. 289.43(8), Stats.?

A. *Chapter NR 718 was specifically developed for managing contaminated soil and contains detailed requirements for how these actions should be conducted. The rule provides broad authority to address these situations as part of a response action.*

The low hazard exemption provisions in s. 289.43(8), Stats., only contains very general language allowing DNR to approve disposal of a specific type of solid waste at a location other than a solid waste disposal facility. Given the above discussion, ch. NR 718 should be used anytime contaminated soil is being managed as part of a response action which includes responding to a hazardous substance discharge or to environmental pollution.

NR 720

Q. Are RCL calculation summary sheets supposed to be submitted as documentation with Site Investigation Reports and Case Closure Requests?

A. *Submittal of RCL calculation summary sheets is highly recommended – but not required – with both Site investigation Reports and Closure Requests. Alternate methods for calculating RCLs may be used; however, submittal of the groundwater and soil calculations on the summary sheets will provide consistency in review, saving time for DNR project managers and likely resulting in faster review times.*

Q. From a data entry standpoint, can one set of data be entered and used in assessing both the groundwater pathway and direct contact levels on the RCL calculation spreadsheets?

A. *No. There are considerably more compounds that have direct contact RCL's than soil-to-groundwater RCL's, and the spreadsheet cannot currently merge the appropriate data from one spreadsheet to another.*

Q. Is DNR ever going to separate residential and commercial properties for purposes of determining non-industrial RCLs?

A. *This issue has been discussed with Technical Focus Group members on multiple occasions going back to at least November, 2005. One issue that proved difficult to address was defining the contaminant exposure assumptions that should be used for commercial land use situations. At the time of these discussions, DNR indicated a willingness to expand the land use options from two to three. Ultimately, the group decided that because the current process has been used for many years and is generally well understood, a change in the current approach was not necessary. The Department remains open to future discussions on this topic.*

Q. Why use a dilution factor of "2" in the RCL calculator? Was that just an example or a suggested convention?

A. *During the discussions on the use of the EPA web calculator, the issue of an appropriate dilution factor was raised. DNR evaluated site specific data and found that in most cases the dilution factor did not exceed 2. As a result it was decided to use a default of 2, with the ability to calculate a higher dilution factor if the site specific data warranted.*

Q. What's recommended when calculating a soil-to-groundwater RCL and no ES is available?

A. *Numerous factors will affect whether a soil-to-groundwater RCL is necessary if there is no ES, so the best initial approach is to contact the project manager to discuss potential option for addressing the compound(s) of concern. If it is determined that a soil-to-groundwater RCL is necessary, all available information should be evaluated such as Federal MCL's as well as EPA's lifetime health advisories or drinking water health advisory levels available from DNR's Drinking and Groundwater program to establish an appropriate value.*

Q. If soil exceeds groundwater RCL but groundwater results show no ES exceedence, do we still need to cap or address soil contamination in some manner?

A. *The Department has guidance that addresses this question. Specifically, RR-528 indicates that "If there is no threat to groundwater from soil contamination, a soil remedy for the groundwater pathway is not needed. However, the lack of groundwater contamination by itself may not be sufficient to establish that there is no threat to the groundwater pathway. For example, factors such as the age of the contaminant release, type of contaminants, geologic*

setting, depth to groundwater, proximity of wells to the source of contamination and other related characteristics will affect whether sufficient time has passed for the contaminants to have reached the groundwater.” An analysis that accounts for the factors listed above would be necessary to justify the conclusion that a groundwater remedy is not needed.

Q. Do we need to complete cumulative exposure calculations for each soil sample or select samples outside of the source/target remediation area?

A. *Cumulative direct-contact assessment must be done for each boring, but not necessarily for each sample. For each boring, the maximum soil contaminant levels found in samples between 0 and 4 feet will be the necessary inputs to the direct contact worksheets to see if there is a cumulative exceedance. However, at a boring where individual RCL exceedances have already been found, it will be redundant and therefore not necessary to indicate that it also has a cumulative exceedance. Reporting a cumulative exceedance is only crucial at a boring where no individual exceedance was found, but where many contaminants are present at levels that when taken together will trigger the exceedance of either a hazard index (of 1) or a cumulative cancer risk (of 1×10^{-5}).*

Q. How does the DNR want “new” soil data reported?

A. *Before the availability of the RCL spreadsheet, individual direct-contact exceedances were routinely reported by “bolding” the levels and indicating locations of the exceedances in the site investigation report tables and maps. Nothing in the NR 700 revisions mandate a specific format to use and therefore reporting individual exceedances from each soil sample can continue. For most sites, this will suffice.*

There may be some sites that have borings where no individual exceedance was found, but where cumulative exceedances exist. These borings will need to be identified in the SI report and closure request.

The following table provides an option for presenting soil sampling data.

Example tables for soil data and groundwater data that could go in SI reports are shown below.

For additional information on the U.S. EPA RSL Web-Calculator, visit the Environmental Professionals webpage. (dnr.wi.gov/topic/Brownfields/Professionals.html#tabx2)

EXAMPLE: Site Investigation Soil Data Table

The PURPOSE of this Table is to display all data. Separate tables for each "contaminant species" is likely to be necessary. For instance: a data table for all VOCs, a data table for all PAHs, a data table for all Metals, etc. ALL tables must be LEGIBLE when printed.

BRRTS #
SITE NAME
SITE ADDRESS
*Date RCLs calculated: 12/2012

BORING #	B-1		B-2		B-3		B-4	...
DEPTH to Seasonal Low Water Table (ft BGS)	6		7		6		8	
Date Collected								
DEPTH (ft below ground surface)	2.5 - 4.5	5 - 7	2.5 - 4.5	5 - 7	0 - 4	6 - 8	2 - 4	Soil RCLs (mg/kg)
SOIL TYPE	clay	peat	clay	silty clay	soil fill	waste fill	sandy silt	
	Soil Concentrations in mg/kg (or ppm)							Non-Indus Direct Contact*
Benzene								1.49
Ethylbenzene								7.47
Toluene								818
Xylene								258
MTBE								59.4
PCE								30.7
TCE								0.644
cis 1,2 DCE								156
VC								0.067
								7.41
								37
								1.1072
								3.94
								0.027
								0.0045
								0.0036
								0.0412
								0.0001

NOTE: Cumulative risk is not identified in these tables due to data size. HOWEVER, cumulative risk must be assessed and the need for remedial action based on cumulative risk must be identified.

EXAMPLE: Site Investigation Groundwater Data Table

The PURPOSE of this Table is to display all data. Separate tables for each "contaminant species" is likely to be necessary. For instance: a data table for all VOCs, a data table for all PAHs, etc. ALL tables must be LEGIBLE when printed. ALL Elevations must reference Mean Sea Level (MSL).

BRRTS #
SITE NAME
SITE ADDRESS

MONITORING WELL #	MW-1		MW-2		MW-3		MW-4		...
Elevation of Screened Interval (MSL)	732-742		733-743		731.5-741.5		732-742		
Date Collected	01/01/2013	04/01/2013	01/01/2013	04/01/2013	01/01/2013	04/01/2013	01/01/2013	04/01/2013	
Groundwater Elevation (MSL)	738.4	736.8	734.2	732.5	736.2	734.3			NR 140 Groundwater Standards
	GW Concentrations in µg/L (or ppb)							ES	PAL
Arsenic								10	1
Barium								2000	400
Cadmium								5	0.5
Chromium								100	10
etc...									

ES exceedance are in **BOLD**

PAL exceedances are in *ITALICS*

NR 722

Q. Are Responsible Parties required to implement any of the sustainable practices they evaluate under NR 722.09 (2m)?

A. *No. Responsible Parties (RP) are required by ch. NR 722 to evaluate sustainable practices associated with a remedial action. Although the Remediation and Redevelopment (RR) Program strongly encourages and promotes the implementation of Green and Sustainable Remediation (GSR) practices, implementation of GSR is up to the Responsible Party.*

Q. Where can Responsible Parties find resources to help them evaluate green and sustainable remediation practices?

A. *The RR Program has created a number of resources to assist RPs in complying with NR 722.09 (2m), and incorporating other GSR options into their response actions at a site. Responsible Parties may find the following documents helpful as they evaluate Green and Sustainable Remediation:*

- *Green and Sustainable Remediation Manual (RR-911)*
- *Site-Specific Sustainability Analyses (RR-921)*
- *Greener Remediation Optimization Techniques (RR-937)*
- *Greener Site Investigation Techniques (RR-938)*

Responsible Parties can find these resources, as well as others, by visiting the Wisconsin Initiative for Sustainable Remediation and Redevelopment webpage at dnr.wi.gov/topic/Brownfields/RRProgram.html (click on “Greener Cleanups” tab).

Q. What if approval of the Remedial Action Option Report is given but the weather does not permit proceeding with the remedial action within 90 days?

A. *Discuss the timeline with the project manager. Note that work preparing for field work also counts as progress. Progress is what matters. The Department’s project manager should be notified if a delay is anticipated to comply with the “unless otherwise directed” clause in the rule.*

NR 726

Q. When determining vapor risk action levels is a library or school classified as a residential setting?

A. *Yes, libraries and schools are classified as residential settings.*

Q. If a building has multiple uses, for example commercial space on the first floor and residential on the second floor, do residential screening levels for vapor intrusion apply to all floors?

A. Apply the vapor risk screening level that matches the use of the floor. In this instance, the first floor would be commercial and the second would be residential.

Q. In NR 726.11, what is meant by “PDFs can’t be locked or password protected?”

A. A normal .pdf document that doesn’t require a password in order to be opened meets this requirement.

Q. If sub-slab samples indicate vapors are present and the entire property is capped by a building, is active remediation for source control required?

A. *Section NR 726.05 (8), “Criteria for Closure for Sites or Facilities With Vapor Contamination,” requires that a site or facility where vapors were present above the vapor risk screening level must meet several criteria before the site is eligible for case closure. These criteria include: (1) completion of a remedial action to reduce the mass and concentration of volatile compounds, to the extent practicable; and (2) interruption or mitigation of the vapor exposure pathway.*

In some instances, a remedial action that reduces the mass and concentration of the volatile compounds may not be possible. These situations should be discussed on a case-by-case basis with the WDNR project manager.

Q. What does DNR consider the “written notice” required under s. NR 726.13 (2) (f)? Is this the cover letter at the time of final closure?

A. *Section NR 726.13 (2) (f) states that the department shall also mail written notice of the Department’s response to a request for case closure to the owners of any property required to receive notification under s. NR 725.05 or s. NR 726.13(1) (c), in addition to those parties identified under par. (c), and (d) of that subsection. The written notice required under ch. NR 726 would apply to both approvals and denials.*

For approvals, the requirement for written notice would be satisfied by attaching a cover letter to the Department’s approval of the case closure (for affected property owners) explaining the relationship of their property to the case closure letter findings. For those persons who have requested to be informed of the department’s closure decision, a copy of the approval or denial letter would be sufficient.

The Department is currently developing a model format for notifying ROW holders about approvals, and for providing written notice for denials to both affected property owners and ROW holders. The Department is currently looking into the feasibility of using email notifications.

Q. At the time of case closure, under what circumstances would the department grant additional time to an impacted property owner beyond the 30-day notice required of the RP seeking case closure?

A. *Sections NR 725.05 and NR 726.13 requires that the RP provide notice to any impacted property owner and ROW holder, and provide at least 30 days of time to elapse prior to the DNR granting case closure. During that time period, an impacted party may have questions or concerns about the final remedial action for the site, which could include a neighboring property or the property of a landlord for which the tenant is the RP. This time period is meant to give due notice to all impacted property owners and ROW holders. This is of utmost importance, because in Wisconsin it is the responsibility of each property owner to maintain any continuing obligation (e.g., cover over contaminated soil, vapor mitigation system, etc.) on their property, whether they are the RP (e.g., causer of the contamination) for the site or not.*

In some cases, the RP has agreed to maintain any continuing obligations associated with a cleanup, even if they do not own the impacted property. Where time is needed to work out such agreements between property owners, or tenants and the property owner, the DNR is willing to provide additional time beyond the 30 days. However, the intention of this time extension is not to provide an impacted property owner with an opportunity to unduly delay the case closure approval. Each situation will be dealt on an individual basis, and a determination made on the valid nature of the time extension request.

Q. Is the NR 726 Appendix A Notification Letter to be replaced by a form?

A. Yes, Form 4400-286, "Notification of Residual Contamination and Continuing Obligations" will replace the NR 726 Appendix A Notification Letter. Until that time, please use the Model Appendix A Notification letter located at: dnr.wi.gov/topic/Brownfields/Laws.html.

NR 727

Q. Does the requirement in ch. NR 727 to notify purchasers or tenants of a property that has a continuing obligation placed on it at the time of closure, apply only to the person receiving case closure letter or to subsequent owners of the property as well?

A. No. The requirement to notify purchasers applies to both existing and subsequent owners of the property. The closure letter directs that the receiver "Provide this letter and any attachments listed at the end of this letter to anyone who purchases, rents or leases this property from you." The intent is that anyone who purchases the property will be responsible for maintaining and not interfering with the continuing obligations. Wisconsin's real estate disclosure law would also apply to any property transaction.

Depending on the circumstances, someone who rents or leases the property may also need to be aware of and/or responsible for maintaining a continuing obligation. Chapter NR 727 states that a lease agreement will need to specify any continuing obligations. The model closure letter will be revised to account for the new provisions in ch. NR 727, also.

NR 749

Q. How are fees charged for enforcement actions?

A. *The Department has the authority to require fees as part of an enforcement action, pursuant to s. 292.94, Stats., and ch. NR 749. In cases where this is a unilateral action, the enforcement document would identify which reports require DNR approval and list the appropriate ch. NR 749 review fee. If the Responsibility Party wishes to use a Negotiated Agreement then either the flat fees or an hourly fee would be acceptable.*

Further, the Department has authority to collect fees to cover costs incurred by the Department to review the planning and implementation of any environmental investigation or cleanup that a person is required to conduct as a result of an enforcement action. The Department is developing guidance to identify the situations where fees for enforcement actions would be assessed, especially if there was no enforceable agreement in effect.